IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2718 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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USHABEN WD/O HEMANTRAY MALHARRAV SHERE & 3 - Appellant(s)
Versus
AYUB ALI PATEL & 2 - Defendant(s)

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Appearance :
MR KASHYAP R JOSHI for Appellant(s) : 1,MR YN RAVANI for Appellant(s) : 2 - 4.
RULE SERVED for Defendant(s) : 1,
UNSERVED-EXPIRED (R) for Defendant(s) : 2,
MR RAJNI H MEHTA for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 19/10/2007

ORAL JUDGMENT

1. The present First Appeal is against the award

passed by the Tribunal below the application for interim compensation, whereby in purported exercise of of the powers under Section 163 of the Motor Vehicles Act (hereafter 'the Act' for short), the interim compensation awarded is of Rs.3,82,840/-. It is further observed that the amount shall be deducted as and when the final order regarding the compensation is passed.

2. Heard Mr.Joshi for the appellant and Mr. Parikh for Mr.Mehta for respondent No.3 insurance company.

3. Upon hearing the learning advocate appearing for both the sides, it appears that as such, the Tribunal while deciding the application for interim compensation, has resorted to the powers under Section 163 A of the Act, which can be resorted to only at the time when the final Award is to be passed. The questions which arise for consideration of this Court, as such are covered under the Judgement dated 15.10.2007 passed in First Appeal No. 3050/00. In the said Judgement, this Court observed a under:

> “3. It appears that the facts are not in dispute so far as it relates to passing the order for interim award by the Tribunal under Section 163A of the Act. As such, as per the scheme of the Act there is no question of exercise of the power under Section 163A of the Act while passing interim award for interim compensation and the exercise of the power under Section 163A of the Act would be at the time when the

final order is to be passed under the claim petition. There are two courses open to the claimant; either to file application under Section 166 of the Act or under Section 163A of the Act, but both the applications are to be decided finally. If the interim matter is to be considered for passing interim award for interim compensation, it is only under Section 140 of the Act. Similar issue came to be considered by the Division Bench of this Court in First Appeal No.3049 of 2000 decided on 23.1.2003 and the Division Bench had observed at para 6 to 11 as under:-

> "6. Ms. Lilu Bhaya, learned advocate for the appellant - Insurance Company has contended that an award under Section 163 A of the Act cannot be regarded to be an interim award and that the same is not subject to the out come in the award under Section 166 of the Act and, therefore, the amount awarded under Section 163 A of the Act is not subject to the adjustment against the award that may be passed in the petition filed under Section 166 of the Act. It is further contended that the petition under Section 163 A of the Act is independent and substantive and there cannot be petition under Section 166 and also 163 A of the Act. There could be either of it. In this regard, reliance has been placed on the decision in the case of Oriental Insurance Company Ltd. Vs. Hansrajbhai V. Kodala & Others, reported in JT 2001(4) SC 477.
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> 7. It is stated by Mr. H.S.Tolia, learned advocate for the respondents that he would withdraw the petition under Section 166 of the Act, pending before the claims Tribunal and, therefore, the order passed under Section 163 A of the Act need not be interfered with as the same has been

passed considering the FIR, Panchanama, Inquest Panchanama, R.C.Book, Insurance Police and the age of the deceased.

8. In view of the principle laid down in the case of Oriental Insurance Company Ltd. Vs. Hansarajbhai V. Kodala & Others (supra), the above contention raised by the appellant - Insurance Company has to be accepted.

9. In the premises aforesaid, in view of the legal position as above the impugned judgement and award is liable to be quashed and set aside.

10. The impugned award under Section 163 A of the Act is hereby quashed and set aside. Appeal is allowed with no order as to costs. R & P shall be returned to the claims Tribunal immediately. An amount of Rs.1,84,000/- deposited by the Appellant - Insurance Company with the Registry of this Court be returned /refunded to the appellant - Insurance Company.

11. At this juncture, it is stated by Mr. Tolia, learned advocate for the respondents that it is apprehended that his application under Section 163 A of the Act may not be considered on merits by the claims Tribunal in view of the above order.

It would be open to the claimants to proceed with the application either under Section 163 A or 166 of the Act before the claims Tribunal."

4. The same will be the situation in the present case and as the matter is covered by the above referred decision of the Division Bench of this Court, no further discussion may be required.

5. In the result, the impugned award

passed by the Tribunal under Section 163A of the Act is hereby quashed and set aside."

4. Same will be the situation. It will be ultimately for the claimant to resort to the proceedings of the main claim petition, which is under Section 166 of the Act. The only power available to the Tribunal for interim compensation is under Section 140 of the Act and not under Section 163 of the Act.

5. In the present case, the Tribunal has ordered for the interim compensation in purported exercise of the power under Section 163A of the Act, which is not warranted in law. As the issue is covered by the above mentioned decision of this Court, no further discussion may be required.

6. In the result, the impugned award dated 31.03.2001 passed by the Tribunal for interim compensation of Rs.3,82,840/- in purported exercise of powers under Section 163A of the Act is quashed and set aside. Consequently, the main application of the claimant under Section 166 of the Act being MACP No. 322/00 shall stand restored to the file of the Tribunal. It would also be open to the claimant to move an application under Section 140 of the Act as may be permissible in law. However, considering the facts and circumstances, the Tribunal shall decide the main claim petition also as early as

possible preferably within a period of six months from the receipt of the order of this Court.

7. Appeal allowed to the aforesaid extent. No order as to cost. D.S.

(JAYANT PATEL, J.)

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